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2 GENERAL CONDITIONS OF FORMAL BID/PROPOSAL

2.1 SUBMISSION OF FORMAL BID/PROPOSAL (herein sometimes also referred to as “response”)

- 2.1.1 The conditions herein constitute a part of the RFFB/RFFP and the Bidder/Proposer acknowledges acceptance of these conditions and waives all claims, rights, demands and the benefit of any provisions of any statute, rule of law or regulation that might affect the rights of the Sacramento Metropolitan Fire District under this RFFB/RFFP by signing the Request for Formal Bid/Proposal form and Appendix 5 Signature Sheet. Responses submitted that do not include a signed Request for Formal Bid/Proposal Form and Appendix 5 Signature Sheet will not be accepted.
- 2.1.2 All communications regarding this RFFB/RFFP should be sent to the Purchasing Agent contact listed on page 2 of the Request for Formal Bid/Proposal. The Sacramento Metropolitan Fire District will assume no responsibility for oral instructions or suggestions. Should the Bidder/Proposer find discrepancies in, or omissions from the specifications, or should the Bidder/Proposer be in doubt as to their meaning, the Bidder/Proposer must notify, in writing, the Purchasing Agent, who may, if necessary, send written addenda to all Bidders/Proposers.
- 2.1.3 Each Bidder/Proposer must make full disclosure of any relationship of any employee of the Sacramento Metropolitan Fire District who makes recommendations concerning the selection of Bids/Proposals or any employee who may allot work to, or order supplies from, the successful Bidder/Proposer. In addition, each Bidder/Proposer must reveal any details of ownership or partnership arrangements of any immediate relative employed by Sacramento Metropolitan Fire District.

2.2 BID AMENDMENT AFTER SUBMISSION AND RFFP CLOSING DATE

- 2.2.1 Bids/Proposals submitted may be withdrawn and re-submitted with amendments prior to the closing date for the RFFB/RFFP. Bid/Proposal amendments submitted in any other manner shall not be accepted or considered by the Sacramento Metropolitan Fire District.
- 2.2.2 Any attempts to amend a submitted Bid/Proposal by way of a letter or facsimile or any other document or means, which would result in a Bid/Proposal being incomplete, ambiguous, inconsistent, or otherwise non-compliant, shall result in the Bid/Proposal being rejected.

2.3 PATENTS

- 2.3.1 The successful Bidder/Proposer will pay all royalties and patent license fees or other fees in respect of any intellectual property right required to perform the work stipulated in the RFFB/RFFP. The successful Bidder/Proposer shall, at its own expense, defend all suits and proceedings instituted against the Sacramento Metropolitan Fire District and indemnify the Sacramento Metropolitan Fire District against any award of damages, demands, losses, charges or costs made against Sacramento Metropolitan Fire District if such suits or proceedings are based on any claim that any of the products, documentation, parts or equipment, as supplied by the successful Bidder/Proposer, constitutes an infringement, or an alleged infringement, of any patent or other intellectual property right by the successful Bidder/Proposer or anyone for whose acts it is liable.
- 2.3.2 If any of the products, documentation, parts or equipment supplied by the successful Bidder/Proposer constitute an infringement of patent or other intellectual property rights and

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its use is enjoined, the successful Bidder/Proposer will, at its own expense, procure for the Sacramento Metropolitan Fire District, the right to continue its prior use, replace or modify the supplied item so it becomes non-infringing and meets the Sacramento Metropolitan Fire District's requirements, or pay Sacramento Metropolitan Fire District for its loss of use of the item and for consequential damages or losses which occur as a result of the actual or alleged infringement of any patent or other intellectual property right, by the successful Bidder/Proposer or anyone for whose acts it is liable.

2.4 GENERAL

- 2.4.1 The Sacramento Metropolitan Fire District may refuse to award a contract to a Bidder/Proposer who has not complied with applicable State and Federal licensing regulations or bylaws or any other requirements.
- 2.4.2 Each Bidder/Proposer warrants that the products and services it will supply to the Sacramento Metropolitan Fire District conform in all respects to the standards set forth by State and Federal licensing regulations.
- 2.4.3 Headings and titles in the RFFB/RFFP are for convenience only and are not explanatory of the clauses with which they appear.
- 2.4.4 Any references in the RFFB/RFFP to statutes or regulations are deemed to include the most recent amendments thereto or replacements thereof.

2.5 INDEMNIFICATION

- 2.5.1 The successful Bidder/Proposer, by its acceptance of a purchase order, agrees to indemnify and hold harmless, the Sacramento Metropolitan Fire District, its agents and employees from and against all loss or expense that may be incurred by the Sacramento Metropolitan Fire District, its officials, officers, employees and agents as a result of bodily injury, including death at any time resulting there from, sustained by any person or persons, or on account of damage to property, including loss of use thereof arising out of, or as a consequence of, the performance of the work stipulated in the RFFB/RFFP.

2.6 COMMITMENT

- 2.6.1 Bidders/Proposers are advised that no commitment exists under this RFFB/RFFP until such time as the successful Bidder/Proposer receives official written confirmation from the Office of the Fire Chief, in the form of a "Notice of Bid Award".

2.7 LIMITATION OF LIABILITY

- 2.7.1 Under no circumstances will a Bidder/Proposer be entitled to consequential damages for any loss of profit or damage to reputation.
- 2.7.2 Under no circumstances will a Bidder/Proposer be permitted to limit their liability to an amount less than two million (\$2,000,000.00) dollars.
- 2.7.3 Under no circumstances will a Bidder/Proposer be entitled to limit special damages.

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2.8 ACCEPTANCE OR REJECTION

2.8.1 The Sacramento Metropolitan Fire District reserves the right to reject any and/or all Bids/Proposals, as well as to cancel the project which is the subject of this RFFB/RFFP. Without limiting the generality of the foregoing, any Bid/Proposal which:

- a. is incomplete, obscure, irregular, unrealistic or non-compliant;
- b. has erasures, ambiguities, inconsistency or correction(s);
- c. omits a price on any one or more items in any Schedule;
- d. fails to complete the information required in any Schedule or tabulation; and
- e. fails to include a duly executed required form

may, at the Sacramento Metropolitan Fire District's sole discretion, be rejected. Furthermore, a response may be rejected on the basis of the Bidders'/Proposers past performance, financial capabilities, completion schedule or failure to comply with state or federal regulations. The purpose of the Sacramento Metropolitan Fire District is to obtain a Bid/Proposal most suitable to the interests of the Sacramento Metropolitan Fire District and what it wishes to accomplish. The Sacramento Metropolitan Fire District has the right to waive any irregularity or insufficiency or non-compliance in any Bid/Proposal submitted and to accept the Bid/Proposal which it deems most favorable to its interests or to reject all Bids/Proposals and cancel the RFFB/RFFP.

2.9 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FOIPP)

2.9.1 The Sacramento Metropolitan Fire District acknowledges that each response may contain information in the nature of trade secrets or commercial, financial, labor relations, scientific or technical information of or about a Bidder/Proposer. The Sacramento Metropolitan Fire District acknowledges and agrees that responses to this RFFB/RFFP are provided in confidence and protected from disclosure to the extent permitted under applicable law.

2.10 VENDOR PERFORMANCE AND EXCUSABLE DELAYS

2.10.1 The successful Bidder/Proposer may be evaluated periodically throughout the course of work and at the end of the project as the case may be. Any evaluations will be shared with the Bidder/Proposer, with the goal of immediate and permanent resolution where problems and concerns occur.

2.10.2 The Sacramento Metropolitan Fire District and Bidders/Proposers acknowledge that delays in performance may arise due to events beyond their reasonable control. Such delays will be excusable and the relevant obligation suspended, but only for such reasonable period of time as the cause for the delay remains beyond the reasonable control of the obligated party.

2.11 COST OF PREPARATION

2.11.1 Bid/Proposal shall be prepared at the sole cost of the Bidder/Proposer and under no circumstances will the Sacramento Metropolitan Fire District be responsible for these costs.

2.12 GIFTS AND DONATIONS

2.12.1 The successful Bidder/Proposer will ensure and certify that no representative of the successful Bidder/Proposer will extend any entertainment, gift, gratuity, discount, or special service, regardless of value, to any employee of the Sacramento Metropolitan Fire District.

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The successful Bidder/Proposer will report any attempt by any employee of the Sacramento Metropolitan Fire District to obtain such favors to the Office of the Fire Chief.

2.13 CLARIFICATION

- 2.13.1 The Sacramento Metropolitan Fire District reserves the right to seek clarification from any Bidder/Proposer to assist in the evaluation of its Bid/Proposal.

2.14 NEGOTIATION

- 2.14.1 By submitting a Bid/Proposal, a Bidder/Proposer accepts that a contract may be concluded upon notification by the Sacramento Metropolitan Fire District. However, the Sacramento Metropolitan Fire District reserves the right to negotiate with any Bidder/Proposer the terms and conditions of the Bid/Proposal. If the parties, after having bargained in good faith, are unable to conclude a formal agreement, the Sacramento Metropolitan Fire District and the Bidder/Proposer will be released, without penalty, or further obligations other than any surviving obligations regarding confidentiality and the Sacramento Metropolitan Fire District may, at its own discretion, contact other Bidders/Proposers whose Bids/Proposals are considered suitable for the project and attempt to conclude a formal agreement with them.

2.15 INTELLECTUAL PROPERTY

- 2.15.1 The successful Bidder/Proposer represents and warrants that it has the sole and unrestricted right, title and interest or good and sufficient power, authority, and right, to use any intellectual property required for the performance of the contract.
- 2.15.2 The successful Bidder/Proposer shall pay all fees associated with the use of the intellectual property, including, but not limited to, license fees and royalties, required for the performance of the contract.
- 2.15.3 The successful Bidder/Proposer shall hold the Sacramento Metropolitan Fire District, its Board of Directors, the Chief, employees, officers, and agents harmless from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the successful Bidder's/Proposers performance of the contract which are attributable to an infringement or an alleged infringement by the successful Bidder/Proposer, or anyone for whose acts they may be liable, of any intellectual property right.
- 2.15.4 If the Sacramento Metropolitan Fire District is enjoined or there is a reasonable likelihood that it may be enjoined as a result of an injunction or claim from using any intellectual property that is incorporated into, or associated with, any product or equipment installed by the Successful Bidder/Proposer, the Successful Bidder/Proposer, at its sole expense, shall:
- (a) procure the right for the Sacramento Metropolitan Fire District to continue using the infringing intellectual property;
- or
- (b) replace or modify the intellectual property to make it non-infringing, so long as such replacement or modification does not adversely affect the performance or use of the product or equipment or the Work generally, all subject to the prior written approval by the Sacramento Metropolitan Fire District.

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2.16 RIGHT TO TERMINATE THE CONTRACT

2.16.1 Any of the following occurrences or acts will constitute a material breach by the successful Bidder/Proposer under the terms and conditions of the contract:

- (a) Non-performance or non-observance of any of its other covenants, agreements, or obligations hereunder, express or implied, continuing for fifteen (15) days after the Sacramento Metropolitan Fire District has given the successful Bidder/Proposer notice in writing. If the failure cannot be remedied within fifteen (15) days, then the Sacramento Metropolitan Fire District, at its discretion, may extend, in writing, the time period, or terminate the contract;
- (b) an assignment for the benefit of creditors or becoming bankrupt or insolvent, taking the benefit of any legislation for the protection of bankrupt or insolvent parties; or
- (c) the appointment of a Receiver for the successful Bidder/Proposer.

In the event either Subparagraphs (b) or (c) occur, as set forth in this Bid/Proposal, the Sacramento Metropolitan Fire District will have the right to terminate the contract immediately, which shall be done in writing and sent to the Bidder/Proposer via certified, U.S. Mail.

2.16.2 Notwithstanding anything contained herein, the Sacramento Metropolitan Fire District may, at any time during the term of the contract, upon giving 30-days written notice to the successful Bidder/Proposer, terminate the contract, if the Sacramento Metropolitan Fire District is of the opinion that the services supplied by the successful Bidder/Proposer are of a unsatisfactory standard to the Sacramento Metropolitan Fire District or that the successful Bidder/Proposer no longer has the financial capability to perform its obligations under the contract. Further, the Sacramento Metropolitan Fire District, in its sole discretion, may terminate the agreement for reasons including, but not limited to, unethical or criminal activities upon giving 7-days written notice to the successful Bidder/Proposer.

2.17 NO COLLUSION

2.17.1 Except as otherwise specified or by reason of a provision of the contractual documents, no person either natural, or corporation, other than the Bidder/Proposer, has or will have any interest or share in its Bid/Proposal or in any award or contract arising out of this RFFB/RFFP. There is no collusion or arrangement between the Bidder/Proposer and any other actual or prospective Bidders/Proposers, in connection with Bids/Proposals submitted in response to this RFFB/RFFP, and the Bidder/Proposer has no knowledge of the contents of other Bids/Proposals and has made no comparison of figures or agreement or arrangement, express or implied, with any other party in connection with the making of its Bid/Proposal.

2.18 EXECUTION OF FORMAL AGREEMENT

2.18.1 If the Bidder's/Proposer's Bid/Proposal is accepted, the Bidder/Proposer may additionally be required to enter into a Formal Written Agreement.

2.18.2 The Formal Written Agreement will be prepared by the Sacramento Metropolitan Fire District and provided to the Bidder/Proposer for review. The Bidder/Proposer will endeavor, in good faith and in a timely manner, execute the Formal Written Agreement (Contract) and return the executed document to the Sacramento Metropolitan Fire District.

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2.19 NO WITHDRAWAL OF PROPOSAL

- 2.19.1 A Bid/Proposal is a specialty instrument by the Bidder/Proposer and is irrevocable. Therefore, it may not be withdrawn after its opening until it has been considered and either rejected or accepted by the District, or the RFFB/RFFP has been cancelled.

2.20 ACCEPTANCE OF PROPOSAL

- 2.20.1 The acceptance of a Bid/Proposal by the Sacramento Metropolitan Fire District will be made by written notice, from the Office of the Fire Chief, addressed to the successful Bidder/Proposer, at the address given in the Bid/Proposal.

2.21 EVALUATION CRITERIA

- 2.21.1 The District retains the option to clarify bid information and/or request on site evaluation of the product from any vendors once the bidding process is closed. The following criteria will be utilized by the Evaluation Team to determine the successful vendor:

SCOPE OF WORK	Weight
COMPLIANCE TO RFFB/RFFP DIMENSIONS – meets mandatory items as identified in each appendix	10%
SYSTEM INTEGRATION – System of ordering and delivery of product integrates with the operations of the Sacramento Metropolitan Fire District Logistics Division	10%
FINANCIAL COST - Full costing analysis	80%
TOTAL	100%

If successful, the Bidder/Proposer may be required to provide as defined in Section 2.22 and 2.23:

2.22 CREDIT CHECKS

- 2.22.1 The successful Bidder/Proposer agrees to allow and authorize the Sacramento Metropolitan Fire District to conduct a credit check. A “Credit Application” form shall be completed and returned to the Sacramento Metropolitan Fire District within 24 hours after receipt by the successful Bidder/Proposer, **if so requested by the Sacramento Metropolitan Fire District.**

2.23 PERFORMANCE GUARANTEE

- 2.23.1 A contract performance guarantee may be required in a form, type and amount, to be mutually agreed upon during contract negotiations between the Sacramento Metropolitan Fire District and the successful Bidder/Proposer.

2.24 INSURANCE REQUIREMENTS

- 2.24.1 The successful Bidder/Proposer shall, during the term of this Agreement and at its own expense, maintain with Insurers, satisfactory to the Sacramento Metropolitan Fire District's General Counsel, the following insurance policies:

- a) A Commercial General Liability insurance policy for bodily injury (including death) and property damage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) inclusive limit for any one occurrence and such policy shall include:
 - i) Sacramento Metropolitan Fire District as an Additional Insured;

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- ii) A Cross Liability clause;
- iii) Contractual Liability Coverage; and
- iv) Non-Owned Automobile Liability Clause.

b) A Professional Liability insurance policy for damages arising out of errors, omissions, or negligent acts by or on behalf of the Bidder/Proposer in providing professional services under this Agreement, such insurance policy to be in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) for any one claim, and in the annual aggregate, or such other amount as agreed to by the Sacramento Metropolitan Fire District and the Bidder/Proposer and confirmed in writing, and such insurance shall remain in full force and effect for at least twenty four (24) months after completion of the contract.

2.24.2 The said insurance policies shall include a provision for the Sacramento Metropolitan Fire District to be given thirty (30) days prior written notice of cancellation, and thirty (30) days prior written notice of any material change(s) requested by Bidder/Proposer of said insurance policies.

2.24.3 The Bidder/Proposer shall furnish documentary evidence, satisfactory to the Sacramento Metropolitan Fire District's General Counsel, of evidence of such policies and of the renewal or continuance of such insurances within ten (10) business days of any expiration date(s) thereof.

2.24.4 The Bidder/Proposer, and not the Sacramento Metropolitan Fire District, shall be responsible for any deductible that may apply in any of the said insurance policies.

2.24.5 The Bidder/Proposer covenants and agrees that the Sacramento Metropolitan Fire District's insurance requirements mentioned above shall not be construed to and shall in no manner limit or restrict the liability of the Bidder/Proposer.

2.25 PROVEN SATISFACTORY PERFORMANCE

2.25.1 The Sacramento Metropolitan Fire District reserves the right to reject any Bid/Proposal based on products that have not demonstrated proven satisfactory performance through field trials or actual use by the Sacramento Metropolitan Fire District, or a comparable fire agency. Whether a product meets this requirement shall be at the sole decision of the Sacramento Metropolitan Fire District. The lowest monetary bid of any of the submitted Bids/Proposals will not necessarily be accepted.

2.26 DISPUTES

2.26.1 Any and all disputes with the bidding process shall initially be attempted to be resolved between the bidder and the District in an informal manner through a meet and confer process. Any and all lawsuits and/or causes of action shall be filed in Sacramento Superior Court, 720 Ninth Street, Sacramento, California.

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2.27 WARRANTY

- 2.27.1 The Bidder/Proposer shall supply information regarding the warranty that the Bidder/Proposer is prepared to offer to the Sacramento Metropolitan Fire District, including the warranty period for each item and all warranty terms and conditions.
- 2.27.2 The warranty and service period shall commence after systems have passed the acceptance testing by the Sacramento Metropolitan Fire District.

2.28 MAINTENANCE AND SUPPORT

- 2.28.1 The Bidder/Proposer should supply information regarding maintenance and support available to support the proposed system after the warranty period has elapsed.
- 2.28.2 The Bidder/Proposer should supply a copy of their standard maintenance agreement.

2.29 LENGTH OF AGREEMENT

- 2.29.1 Any contract resulting from this request shall be in effect for a period of One (1) year from the date of official acceptance by the Sacramento Metropolitan Fire District and may be extended upon mutual agreement by both parties each year for an additional two (2) years.